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February 13, 2003

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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Re: *Kodiak Wireless, LLC*
Call Sign: WPOL234
Alaska 2 - Bethel RSA (A2)
CC Docket No. 99-200
CC Docket No. 95-116
WT Docket No. 01-184

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

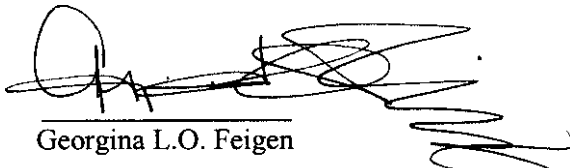
Dear Ms. Dortch:

Kodiak Wireless, LLC ("Kodiak"), by its attorney, hereby submits comments in response to the Commission's request for comments in regards to petitions filed by Kodiak and Pine Belt PCS, Inc. and Pine Belt Cellular, Inc. (collectively "Pine Belt") for limited extensions of the deadline requiring all covered CMRS providers to be able to support the nationwide roaming of customers with ported and pooled numbers by November 24, 2002.

Please contact the undersigned counsel with any questions you may have at (202) 783-4141.

Sincerely,

Wilkinson Barker Knauer, LLP

By: 
Georgina L.O. Feigen

Enclosure

cc: Barry Ohlson, Division Chief, Wireless Telecommunications Bureau, Policy Division
Jared Carlson, Deputy Division Chief, Wireless Telecommunications Bureau, Policy Division
Peter Trachtenberg, Wireless Telecommunications Bureau, Policy Division

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FEB 13 2003

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**Before the
Federal Communications Commission
Washington, DC**

In the matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Petition for Limited Waiver and Extension of Time by Kodiak Wireless, LLC)	WT Docket No. 01-184
)	
Petition for Waiver Filed by Pine Belt PCS, Inc. and Pine Belt Cellular, Inc.)	

To: Wireless Telecommunications Bureau

COMMENTS OF KODIAK WIRELESS, LLC

Kodiak Wireless, LLC (“Kodiak”), hereby submits comments in support of the petitions filed by itself and Pine Belt PCS, Inc. and Pine Belt Cellular, Inc. (collectively “Pine Belt”) for limited extensions of the deadline requiring all covered CMRS providers to be able to support the nationwide roaming of customers with ported and pooled numbers by November 24, 2002.¹ The circumstances giving rise to these requests for extension of time to meet the Commission’s roaming deadline for pooled and ported numbers are part of the ongoing difficulties that small wireless carriers are faced with in their attempts to meet the Commission’s various regulatory obligations.

¹ 47 C.F.R. § 52.31(a)(2). See *Public Notice, Wireless Telecommunications Bureau Seeks Comment on Petitions for Extension of the Deadline for Support of Roaming by Wireline End-Users With Ported or Pooled Numbers*. DA 03-148 (rel. Jan. 16, 2003)(“WTB Notice”).

I. BACKGROUND

Kodiak is a small rural cellular provider that operates off of one switch on Kodiak Island in Alaska. Kodiak Island's population density is less than two people per square mile. Kodiak's customer base is comprised of approximately 1,600 subscribers from a local military base, fishing villages, and tourists who visit Kodiak Island which is located off of the Alaskan coast.

On November 22, 2002, Kodiak timely filed its Petition for Limited Waiver and Extension of Time ("Kodiak Petition") with the Wireless Telecommunications Bureau ("WTB"), requesting until the end of the second quarter in 2003 to meet the obligations set forth in Section 52.31(a)(2) of the Commission's rules requiring wireless carriers to support roaming of pooled and ported numbers. In response to Kodiak's petition and a petition filed by Pine Belt, the WTB released a Public Notice on January 16, 2003 seeking comment on the petitions for extension of the deadline for the support of roaming by wireless end-users with ported or pooled numbers.⁷

A. Recent Developments

On February 11, 2003, Kodiak filed an Amendment to its underlying Petition for Limited Waiver and Extension of Time ("Amendment"). In its Amendment, Kodiak informed the Commission that due to its diligent efforts Kodiak has been able to obtain both the hardware and software platforms necessary to become capable of supporting roaming of customers with pooled and ported numbers. Experiencing full cooperation from its vendors and benefiting from unexpectedly quick deliveries, Kodiak was able to accelerate its timetable for implementing the hardware and software platforms necessary

² *Petition for Waiver by Pine Belt PCS, Inc. and Pine Belt Cellular, Inc.*, CC Docket Nos. 99-200 and 95-116, WT Docket No. 01-184 (filed November 22, 2002).

³ See *WTB Notice*, DA 03-148 (rel. Jan. 16, 2003).

to comply with the Commission's requirement to support roaming of pooled and ported numbers. Indeed, Kodiak plans to complete its installation and uploads by February 26, 2003, one day before Reply comments are due in response to the *WTB Notice*. Thus, Kodiak's Amendment shortened the time frame needed by Kodiak to meet its roaming obligations to the end of February 2003, instead of the end of the second quarter in 2003.

II. SMALL CARRIERS SUCH AS KODIAK FACE UNIQUE DIFFICULTIES NOT FACED BY LARGER CARRIERS

A waiver of the Commission's rules is generally granted for "good cause" shown, if "in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."⁴

Small carriers face unique difficulties in meeting regulatory obligations due to the tremendous strain upon the limited resources available to such carriers. In the Kodiak Petition, Kodiak explained that upgrades of the type required to meet the Commission's obligation to support roaming of ported and pooled numbers have a significant fiscal effect on a carrier with such a minimal subscriber base.⁵ Kodiak notes that the Pine Belt Petition cites similar financial difficulties, noting that it expects its upgrades to cost in excess of \$500,000.⁶

Indeed, as noted in the Kodiak Petition, the Commission's porting and pooling obligations are only one of a number of regulatory obligations currently required by the FCC.⁷ In today's brutal economic climate, these obligations disproportionately affect the

⁴ 47 C.F.R. §§ 1.3, 1.925; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) *cert. denied*, 409 U.S. 1027 (1972)

⁵ Kodiak Petition at 3.

⁶ Pine Belt Petition at 3.

⁷ Kodiak Petition at 3.

bottom line of small telecommunications carriers. The Commission recognized the unique burdens placed upon small carriers in the recent *E-911 Stay Order*, wherein it provided extended deadlines for its newly designated ‘Tier III’ small carriers.’ Similarly, several small carriers petitioned for extensions of three months to one year beyond the date by which digital wireless providers must be capable of transmitting 911 calls made using text telephone (“TTY”) devices. The FCC granted all the small carrier extensions noting that vendors typically give priority to the larger, nationwide carriers, making it difficult for small carriers to obtain the needed upgrades on a timely basis.⁹

Support for Kodiak’s request may be found in the WTB’s recent grant of two petitions filed by two similarly situated small carriers seeking extensions of the same November 24, 2002 deadline sought by Kodiak. On January 17, 2003, the Bureau granted the Petitions for Temporary Waiver and Extension of Time filed by Cellular Phone of Kentucky, Inc. (“CPK”) and Litchfield County Cellular, Inc. (“LCC”), each requesting a limited extension of the November 24, 2002 deadline.” For similar reasons, the extension request by Kodiak should also be granted as Kodiak has been faced with limited resources and has requested an extension that is limited in nature. Moreover, Kodiak’s Amendment shortened the amount of time for its request from seven months to three months.

⁸ Kodiak Petition at 4; citing to *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers, Order to Stay*, 17 FCC Rcd. 14841, 14844 (rel. July 26, 2002) (“*E-911 Stay Order*”). Tier III Carriers are those non-nationwide carriers that provide service to less than 500,000 subscribers. *Id.* at 14847.

⁹ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*. CC Docket No. 94-102, *Order*, 17 FCC Rcd. 12084 (WTB June 28, 2002).

¹⁰ *Petitions for Temporary Waiver and Extension of Time by Cellular Phone of Kentucky, Inc., and Litchfield County Cellular, Inc.*, CC Docket No. 99-200, *Letter*, DA 03-165 (rel. January 17, 2003) (“*WTB Letter*”).

III. KODIAK'S LIMITED REQUEST IS IN THE PUBLIC INTEREST

In addition to the special circumstances faced by Kodiak that are outlined above, the request set forth in the Kodiak Petition and Amendment will provide no harm to the public interest, as few, if any, roaming customers will be affected passing through its network.’’ The Pine Belt Petition concurs that “the vast majority of subscribers roaming” through its network will have non-pooled numbers, “resulting in only a minimum amount of disruption of service to roamers with pooled numbers.””

In the *WTB Letter*, the Bureau held in granting the CPK and LCC Petitions that the impact on the public would be “insignificant.”” Further, based upon Petitioner’s “good faith efforts to comply with their regulatory obligations,” the WTB concluded that granting the relief requested by these small, rural carriers would be consistent with the public interest.”¹⁴ Kodiak’s Amendment shortening the time it needs to be capable of supporting roamers with pooled or ported numbers is evidence of such “good faith” efforts warranting the grant of a brief extension and demonstrating “good cause” for a limited waiver of the Commission’s rules. The impact, if any, on the public, would be “insignificant.”

¹¹ Kodiak Petition at 2, n. 2

¹² Pine Belt Petition at 5.

¹³ *WTB Letter* at 3.


¹⁴ *Id.*

IV. CONCLUSION

For the above mentioned reasons, the Bureau should grant Kodiak's Petition, as amended, for a temporary **waiver** of Section 52.31(a)(2) of the rules **and** an extension of time until the end of February 2003 to complete its installation of the necessary upgrades to its switch in order to **support** nationwide roaming of ported and pooled **numbers**.

Respectfully submitted,

Kodiak Wireless, LLC

By: 
Jeff Derrickson
General Manager
Kodiak Wireless, LLC

February 13, 2003